ADEPT
Legal Commentaries

Administrative-territorial reform 2002

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The laws passed at the end of 2002, amended and modified during the first spring Parliament session, recently have been in the spotlight of public attention. Given the fact that the Constitutional Court outlawed Parliament resolution on the early general local elections, local public administration bodies elected in 1999 will continue to exercise their mandates. Consequently there is plenty of time to analyze the modifications operated to the laws. The most efficient way of analyzing the amendments is to compare them with the original provisions.

Law no.764-XV of 27.12.2001 on the Administrative-Territorial Division
Of the Republic of Moldova
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Unlike the 1998 law, the qualifier "**real**" is absent from Article 1 of the 2001 law, when referring to the needs administrative-territorial division should meet. Previously the law provided that the administrative-territorial organization of the country is conducted based on the constitutional provisions and is implemented "**in conformity with the *real* economic needs**", whereas the new wording of the law excludes "**real**" without any particular reason. In addition, the previously used word "**civilization**" was replaced with "**development**", probably to emphasize that there is a long way to go to civilization and that administrative-territorial units are still in the development stage.

In the new wording of Article 2, a new principle was introduced "**ensuring citizens' access to public administration bodies**". It is hard to imagine that the Law on Administrative-territorial Division could ensure such an access, given that no significant modifications related to decentralization of public administration or services were operated. Naturally, one of ways of fulfilling the said principle was to establish specialized bodies within the counties, as it is not forbidden to have within the counties officers or public services responding to the residents' needs. It is worth mentioning that even in 1996-1998 there were several draft laws providing the establishment of "districts", as conventional structures within the counties.

Article 3 of the revised law was completed and provides that administrative-territorial units are legal entities of "**public law**". Although the relevant notion is related rather to the theory of law, the inclusion of this specification is considered to be an improvement.

A provision specifying that "**a municipality may be divided into districts**" was excluded from the revised version of Article 7. The provision was excluded in order to consolidate the local power within a single authority, thus avoiding its dispersion into internal structures. On the other hand, the annex to the law includes the "**district**" notion, but only in reference to Chisinau municipality. It is unclear then, why the provision was excluded in the first place and why Chisinau Municipality is treated differently, especially at the capital status is to be regulated by a separate organic law.

Amendments to Article 8 reduce the number of municipalities from 15 to 5. Ten cities have thus lost their municipality status. In compliance with Article 7, the cities of Cahul, Causeni, Dubasari, Edinet, Hincesti, Orhei, Ribnita, Soroca, Taraclia and Ungheni lost their status, namely "**special role in the economic, socio-cultural, scientific, political and administrative life of the country, having major industrial and commercial structures as well as education, Medicare and cultural institutions**". Though, those qualities may be lost by a city within a three-year period only upon calamities or other types of social or economic cataclysms.

A new provision, absent in the original law was included in paragraph (4) of Article 10 defining the boundaries of the second level administrative-territorial units.

A special consideration must be given to Article 17, which was completed with two new provisions:

a. The Parliament shall establish, abolish and modify the status of the administrative-territorial unit after consulting citizens "**once in four years**". The specification on periodicity may be interpreted as permission or rather as an obligation every 4 years to modify the administrative-territorial organization. The authors of the law probably meant to set a legal moratorium on modifications, which might be operated, in the administrative-territorial division, nevertheless the final wording is very ambiguous.

b. Above mentioned activities shall be conducted at least 6 months prior to parliamentary elections. Though, the law does not go further as to explain what will happen upon early parliamentary elections, when the 6 months period may neither be foreseen nor respected.

Unlike the 1998 Law the 2001 one does not include provisions regulating how public officers elected in 1999 should exercise their mandate. Logically, upon the revision of the administrative-territorial division and mayor election procedure, the Parliament should have specified whether elected officials continue to exercise their mandate or it should be terminated.

Many experts claim that the lack of provisions in the organic law on the termination of the elected officers' mandate was the main reason for outlawing the Parliament decision on establishing the day of early general local elections for April 7, 2002. Given the lack of such provisions in the organic law, the four year mandated of the elected officers was to be terminated based on the Parliament decision. Of course, the Parliament majority could have voted (and still can) any law, including a constitutional one, nevertheless the procedure should be observed.

Concluding the comparative analysis of the former and modified Law on Administrative-Territorial Division of the Republic of Moldova it is worth mentioning that there are no major differences between the general norms of the 2001 law and that of 1998, except for several obvious differences. The main difference consists in the modification of the administrative-territorial units' structure, namely:

- Abolishing counties;
- Establishing rayons;
- Merger or separation of some villages and communes;
- Establishing new mayoralties.

We could affirm that the Parliament could have just replaced the "county" notion with that of "rayon" and correspondingly amend the annexes; thus the rest of the law would have remained unchanged.

We could also expect that because of the Constitutional Court ruling some modifications to the Law on the Administrative-territorial Division will be operated - either to stipulate in the organic law the termination of mandates, or specify that the new law will enter into effect upon general local elections of 2003.